

Office for
Students



Regulatory advice 10: Accountable officers

Guidance for providers on the
responsibilities of accountable officers

Reference **OfS 2018.29**

Enquiries to **regulation@officeforstudents.org.uk**

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Introduction

1. This regulatory advice sets out the responsibilities of a higher education provider's accountable officer under the Office for Students' (OfS's) regulatory framework and to the Department for Education (DfE). The accountable officer is a person, normally the head of the provider, who reports to the OfS on behalf of the provider (and, for providers with specific course designation, the accountable officer is the head of the legal entity in receipt of designation).
2. Accountable officers will typically have additional responsibilities, imposed by law or by agreement, to their provider, and possibly to other stakeholders. The OfS may have an interest in whether those responsibilities are discharged, as they may be relevant to the governance and conduct of the provider, but it does not offer advice on them.
3. Part A of this document applies to higher education institutions and further education and sixth form colleges that are funded by the OfS from 1 April 2018 to 31 July 2019. For these providers this regulatory advice should be read alongside the following:
 - a. 'Regulatory notice 2: Regulation up to 31 July 2019 of providers that were previously funded by the Higher Education Funding Council for England' (OfS 2018.12).
 - b. 'Terms and conditions of funding for higher education institutions' (OfS 2018.15).
 - c. 'Terms and conditions of funding for further education and sixth form colleges' (OfS 2018.16).
4. Part B of this document applies to providers that are designated for student support by the Secretary of State for Education. For these providers this regulatory advice should be read alongside the following:
 - a. 'Regulatory notice 3: Regulation up to 31 July 2019 of providers that are currently designated for student support by the Secretary of State' (OfS 2018.13).
 - b. 'Specific course designation: alternative higher education providers'¹.
 - c. The conditions contained in the declaration that the accountable officer has signed for the DfE.
5. Part C of this document applies to all providers that have been registered by the OfS and so are subject to ongoing condition E3 of registration, relating to 'Accountability', whether or not Parts A and B also apply. For these providers this regulatory advice should be read alongside 'Securing student success: Regulatory framework for higher education in England' (OfS 2018.01) and one of the following:
 - a. 'Regulatory notice 2: Regulation up to 31 July 2019 of providers that were previously funded by the Higher Education Funding Council for England' (OfS 2018.12).

¹ Available at <https://www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers>.

- b. 'Regulatory notice 3: Regulation up to 31 July 2019 of providers that are currently designated for student support by the Secretary of State' (OfS 2018.13).
 - c. 'Regulatory notice 4: Regulation of newly registered providers up to 31 July 2019' (OfS 2018.14).
6. The responsibilities of an accountable officer under the OfS's carried forward powers, the DfE's specific course designation criteria and the OfS's new powers are not identical, although they do not conflict in any way. A provider's accountable officer is responsible to the OfS and to the DfE in respect of each organisation's requirements as set out in the remainder of this document.

Part A: Requirements for higher education institutions and further education and sixth form colleges funded by the OfS up to 31 July 2019

7. The OfS's regulatory framework published in February 2018 (OfS 2018.01) will not come fully into force until 1 August 2019. The secondary legislation that enacts the Higher Education and Research Act 2017 (HERA) makes provision for the powers and duties of the Higher Education Funding Council for England (HEFCE) (under the Further and Higher Education Act 1992) and the Director of Fair Access to Higher Education (under the Higher Education Act 2004) to be exercised by the OfS until all of its new powers begin.
8. This means that providers previously funded by HEFCE will be funded and regulated by the OfS from 1 April 2018 to 31 July 2019 through a combination of the powers and duties 'carried forward' from the previous legislation and the new HERA powers and duties. This is called the 'transition period'.
9. During the transition period a provider is required to comply with:
 - a. The terms and conditions of funding that are in place under the 'carried forward' powers (OfS 2018.15 for higher education institutions and OfS 2018.16 for further education and sixth form colleges).
 - b. The agreement on institutional designation (OfS 2018.17) that attaches, on a voluntary basis, similar terms that apply to all publicly subsidised student support that the provider receives, including student support arrangements for postgraduate loans.
10. The accountable officer is²:
 - a. Personally responsible to the governing body for ensuring compliance with the terms and conditions of funding and for providing the OfS with clear assurances about compliance.
 - b. Required to appear before the Public Accounts Committee, if it requests their attendance, alongside the OfS's chief executive, on matters relating to public funding received from the OfS or from other bodies.
 - c. Required to report to the OfS on behalf of the provider in relation to the provider's accountability for funding and the quality of its data (higher education institutions only).
 - d. Required to inform the OfS of any change in the provider's circumstances that – in the judgement of the accountable officer and in agreement with the governing body – represents a material change, including any significant developments that are relevant to the interests of the OfS (higher education institutions only). The types of changes that must be reported are

² Except where noted all these terms and conditions apply both to higher education colleges and to further education and sixth form colleges.

set out in paragraphs 39 to 41 of the terms and conditions of funding for higher education institutions (OfS 2018.15).

- e. Required to report to the OfS on behalf of the provider in relation to accountability for funding (further education and sixth form colleges only).
 - f. Required to inform the OfS about any planned major changes in higher education strategy (including any plans to withdraw from higher education that is directly or indirectly funded by the OfS) and plans for major restructuring, merger with another institution or organisation or change of corporate form (including where a sixth form college plans to become an academy). Notification to the OfS should be as soon as possible and at least three months before the changes are due to take effect (further education and sixth form colleges only).
11. The sections that follow set out what is expected of an accountable officer and who would be appropriate under the OfS's carried forward powers to be an accountable officer for a higher education institution (paragraphs 12 to 15) or a further education or sixth form college (paragraphs 16 to 18).

Accountable officer of a higher education institution

Appointment of an accountable officer

12. Under the terms and conditions of OfS funding, a provider's governing body is responsible for its use of public funds. To assist and enable a governing body to discharge this responsibility and to ensure clear accountability, a governing body must designate a senior officer as the 'accountable officer'. This person would normally be the head of the provider, vice-chancellor, principal, chief executive or equivalent.
13. Where the head of a provider does not appropriately discharge their duties or acts improperly, the governing body is expected to take appropriate action. If the OfS judges that there is evidence of serious failure in relation to the oversight and management of public funds, it will raise this with the accountable officer, the chair of the governing body, or both; provide the relevant evidence; and seek and consider a response.
14. In extremis, and after all due process has been exhausted, the OfS's chief executive may conclude that the accountable officer is unable or unwilling to meet their responsibilities under the terms and conditions of OfS funding. The governing body may then be asked to appoint someone else to report to us on behalf of the provider. In taking this action the OfS will not seek to influence the employment relationship between the governing body and the head of the provider. The governing body is clearly entitled to maintain a head of provider in post. However, the governing body would then have to designate another senior officer as the accountable officer, and adjust the roles and responsibilities of the head of provider accordingly.

Changes to a provider's accountable officer

15. The governing body of a provider must notify the OfS of any change in the identity of its accountable officer by contacting the OfS at regulation@officeforstudents.org.uk. A likely prolonged absence from work, or a sudden departure, on the part of a current accountable officer will require the identification and notification of an interim accountable officer.

Accountable officer of a further education or sixth form college

16. The accountable officer for a further education or sixth form college should be the same person as the accounting officer required by the Education and Skills Funding Agency (ESFA).
17. As noted in paragraph 10e, the accountable officer is required to report to the OfS on behalf of the further education or sixth form college in relation to accountability for funding. In exceptional circumstances, the OfS may take the view that the accountable officer is failing to meet these responsibilities. Faced with this position the OfS would be obliged to respond in a fair, reasonable and proportionate way.
18. The governing body of a provider must notify the OfS of any change in the identity of its accountable officer by contacting the OfS at regulation@officeforstudents.org.uk. A likely prolonged absence from work, or a sudden departure, on the part of a current accountable officer will require the identification and notification of an interim accountable officer. A new or interim accountable officer is still expected to be the same person as the accounting officer for the ESFA.

Part B: Requirements for providers designated by the Secretary of State up to 31 July 2019

19. The OfS's regulatory framework published in February 2018 (OfS 2018.01) will not come fully into force until 1 August 2019. Up to 31 July 2019 providers that have been designated by the Secretary of State for Education for 2018-19 will be regulated by the DfE under the Secretary of State's powers. This means that those providers that have been registered by the OfS from 1 April 2018 to 31 July 2019 will be regulated through a combination of the OfS's new HERA powers and duties and the Secretary of State's powers to designate courses. This is called the 'transition period'.
20. During the transition period a provider is required to comply with the criteria and conditions of specific course designation. The DfE's guidance states the following about the accountable officer³:

'The Department requires the provider to nominate an accountable officer to sign a declaration that commits the provider to meeting the criteria and conditions of designation. This person will receive official communications from the Department and [the OfS].

'This individual should be the head of the legal entity in receipt of designation. Within a charity/public organisation this individual would be expected to be the Chief Executive (or equivalent). Within a private company the individual would be expected to be a Director of the company and hold a position equivalent to the Chief Executive. Where there are particular circumstances that mean that this individual is not best placed to fulfil the role of accountable officer the Department will consider alternative nominations. Where this is the case the Department will require confirmation that this person has appropriate delegated authority in place.'

21. The DfE's guidance on specific course designation does not set out the responsibilities of the accountable officer. However, the DfE requires the accountable officer to sign a declaration when the provider is designated for student support purposes that sets out the responsibilities of the accountable officer in relation to this designation. The OfS expects to see these responsibilities delivered by the accountable officer and this is one part of a provider's compliance with its ongoing conditions of registration – condition Z2 requires providers to comply with the terms and conditions of specific course designation imposed by the Secretary of State. The accountable officer declaration includes the following responsibilities:

³ <https://www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers>.

References in the DfE guidance to 'HEFCE' mean 'the OfS' as HEFCE was abolished on 31 March 2018 and the OfS is the successor body that will fulfil the same role for the DfE during the transition period. Any new guidance issued by the DfE during the transition period will supersede the information set out in this OfS regulatory advice.

- a. Ensuring the ongoing compliance with the conditions of designation as set out in the DfE's publication 'Specific course designation guidance: Policy and guidance for alternative providers of higher education – criteria and conditions (July 2017)' ('the Guidance') or its equivalent.
- b. Providing the DfE with clear assurance about compliance as set out in paragraph 21a, as specified in the Guidance. This includes complying with the conditions of specific course designation; subscribing to and submitting data to the Higher Education Statistics Agency; paying a subscription or annual maintenance fee to the Quality Assurance Agency for Higher Education where applicable; and joining the complaints handling scheme operated by the Office of the Independent Adjudicator for Higher Education.
- c. Responsibility to the DfE for ensuring that only the designated courses and locations are uploaded onto the Student Loans Company (SLC) course database and for any information advertised to students in literature or websites about the availability of student support for particular courses.
- d. Applying to change the location of an already designated course through a change of circumstance form that must be received by the OfS at least three months in advance of the proposed change of location.
- e. Advising the DfE if, at any time, any action or policy under consideration by the provider appears to be incompatible with:
 - i. The conditions of designation set out by the DfE in the Guidance.
 - ii. Any additional conditions specified in the letter of designation.
- f. Informing DfE in writing immediately if the provider decides to proceed with an action or policy (as set out in paragraph 21e).
- g. Accountability to the DfE for ensuring that the use to which funds received from the SLC are put is consistent with the purposes for which those funds were given. This will include ensuring appropriate financial management, governance and operational systems in place to deliver the designated courses.
- h. Personal responsibility for propriety and regularity in the use of the funds received from the SLC and in the delivery of the designated courses.
- i. In relation to student numbers, accountability to the DfE for ensuring that:
 - i. The number of new eligible full-time students recruited to specifically designated full-time courses each year does not collectively exceed any student number control allocated to those courses.
 - ii. The number of new eligible students recruited each year to part-time or distance learning courses does not exceed any student number controls that are allocated to those courses.
 - iii. In the case of providers with a student number allowance, the total number of eligible students does not at any time exceed the permitted allowance.

- j. Meeting the DfE's reporting requirements to the OfS, including reporting any change of circumstance set out in the Guidance. In particular this applies to:
 - i. Any change in financial performance or position which is material to the institution's financial sustainability.
 - ii. Any fraud, serious weaknesses, or major accounting breakdown reported by external or internal auditors, or which come to light by any other means, including issues which might lead to reputational concerns.
- k. Accountability to the DfE for ensuring that the provider registers students with the relevant awarding body before confirming attendance and claiming fee payments for those students from the SLC.

Changes to a provider's accountable officer

- 22. The governing body of a provider must notify the OfS of any change in the identity of its accountable officer by contacting the OfS at regulation@officeforstudents.org.uk. This is a requirement of the conditions of specific course designation and the new accountable officer must meet the requirements of the role set out in paragraph 21 above or in any successor declaration required by the DfE. The OfS will notify the DfE of the proposed new accountable officer, and the DfE will then write to the provider to confirm the new accountable officer and to ask for a signed declaration that covers the matters set out in the declaration provided by the DfE (as set out in paragraph 21 above or in any successor declaration required by the DfE).

Part C: Requirements for providers registered with the OfS

23. The OfS's regulatory framework published in February 2018 (OfS 2018.01) will not come fully into force until 1 August 2019. This means that newly registered providers will be regulated on the basis of a subset of the OfS's new HERA powers and duties from the date a provider is registered until 31 July 2019. This is called the 'transition period'.
24. During the transition period all registered providers are required to comply with the ongoing conditions of registration that are imposed from the date of their registration. This includes condition E3:

Condition E3: Accountability

The governing body of the provider must:

- i. Accept responsibility for the interactions between the provider and the OfS and its designated bodies.
- ii. Ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction.
- iii. Nominate to the OfS a senior officer as the 'accountable officer' who has the responsibilities set out by the OfS for an accountable officer from time to time.

25. Condition E3 requires a provider to nominate to the OfS a senior officer as the accountable officer and for that individual to fulfil the responsibilities set out in paragraphs 38-40.
26. For a provider subject to the requirements set out in Part A of this document, the requirements of Part C subsume and replace those requirements from the date the provider is registered. The accountable officer for the purposes of Part A will be the accountable officer for the purposes of Part C, providing the individual is judged by the OfS to be an appropriate and a fit and proper person (see paragraph 33).
27. A provider subject to the requirements set out in Part B of this document will, in addition, be subject to the requirements of Part C from the date the provider is registered. The accountable officer for the purposes of Part B will be the accountable officer for the purposes of Part C, providing the individual is judged by the OfS to be an appropriate, fit and proper person (see paragraph 33).
28. For new providers not subject to Part A or Part B of this document, the requirements of Part C are in place from the date the provider is registered.

Definition of an accountable officer

29. The regulatory framework defines the 'accountable officer' as follows:
- a. The accountable officer must be the provider's senior officer, who should normally be the head of the provider, vice-chancellor, principal, chief executive, or equivalent.
 - b. An accountable officer is the officer who reports to the OfS, the designated data body and the designated quality body on the provider's behalf, and has the responsibilities set out by the OfS in paragraphs 38-40.
 - c. If the provider is a further education or sixth form college, the accountable officer will be the person who acts as the 'accounting officer' for the ESFA.
30. The regulatory framework also notes that the OfS will only accept an accountable officer who is not the most senior officer of the provider where the OfS considers that there is sufficient reason for this: for example, if the provider has a number of activities not all of which are related to higher education provision, and there is a senior officer who is not the overall chief executive officer but is responsible for the higher education activities.
31. If the OfS accepts that the nominated individual is suitable to be the accountable officer during the registration process, then it will write to that individual setting out the responsibilities of an accountable officer.
32. Where the OfS is not satisfied with the way in which an accountable officer is discharging their responsibilities, it may impose a specific condition of registration requiring the governing body to appoint a more suitable individual as accountable officer.

Agreement of a provider's accountable officer

33. The OfS will assess the suitability of a proposed accountable officer as part of the registration process (see OfS 2018 .04). This involves checking that the individual meets the definition in paragraph 29 and that they are fit and proper to ensure that the ownership and management arrangements for the provider are appropriate, and do not present a risk to students or to public funds.
34. When a provider is successfully registered, the OfS will confirm in writing the name and post of the accountable officer.
35. The provider's governing body must subsequently inform the OfS in writing to regulation@officeforstudents.org.uk of a proposed change in its accountable officer as a reportable event⁴.

⁴ The regulatory framework sets out under condition F3 a number of 'reportable events' that must be reported. This does not include a change in accountable officer. As noted in the regulatory framework, however, the list is not exhaustive.

36. The OfS will assess the nominated individual as set out in paragraph 33. If no concerns are identified with the suitability or fitness and propriety of the nominated individual, the OfS will confirm in writing that it accepts the new accountable officer.
37. In the event of a prolonged absence from work or a sudden departure on the part of an accountable officer, the governing body must ensure that the OfS is made aware immediately of the identity of the interim accountable officer under the reportable events process, by email to regulation@officeforstudents.org.uk. The interim accountable officer will be subject to the same assessment and approval process as an individual being proposed as a permanent appointment.

Responsibilities of an accountable officer

38. The regulatory framework (OfS 2018.01) sets out the OfS's approach to regulating individual providers and the general ongoing conditions of registration that registered providers are required to satisfy. Some of these conditions place requirements on a provider's governing body, and providers should refer to the regulatory framework to identify these. The focus of this regulatory advice document is the accountable officer's responsibilities and these are set out in paragraphs 39-40.
39. An accountable officer of a **registered provider that is funded by the OfS** during the transition period (under the terms and conditions of funding using the OfS's 'carried forward' powers) is⁵:
- a. Personally responsible to the governing body for ensuring compliance with the terms and conditions of funding and for providing the OfS with clear assurances about compliance.
 - b. Required to appear before the Public Accounts Committee, if it requests their attendance, alongside the OfS's chief executive, on matters relating to public funding received from the OfS or from other bodies.
 - c. Required to report to the OfS on behalf of the provider in relation to accountability for funding and the quality of the provider's data (higher education institutions only).
 - d. Required to inform the OfS of any change in the provider's circumstances that – in the judgement of the accountable officer and in agreement with the governing body – represent a material change, including any significant developments that are relevant to the interests of the OfS (higher education institutions only).
 - e. Required to report to the OfS on behalf of the provider in relation to accountability for funding (further education and sixth form colleges only).
 - f. Required to inform the OfS about any planned major changes in higher education strategy (including any plans to withdraw from higher education that is directly or indirectly funded by the OfS) and plans for major restructuring, merger with another institution or organisation or change of corporate form (including where a sixth form college plans to become an academy).

⁵ Except where noted all these terms and conditions apply both to higher education colleges and to further education and sixth form colleges.

Notification to the OfS should be as soon as possible and at least three months before the changes are due to take effect (further education and sixth form colleges only).

40. An accountable officer of **a registered provider** from the date of first registration (under the conditions of registration using the OfS's new powers) is:
- a. Personally responsible for the funding received by the provider from the OfS and, where relevant, from UK Research and Innovation via Research England. This responsibility extends to the following relevant elements of HM Treasury's requirements in relation to public funding, which are regulated by the OfS through the additional public interest governance principles that apply to those providers receiving financial support from the OfS or from UK Research and Innovation:
 - i. Independent members of the governing body.
 - ii. Regularity, propriety and value for money.
 - b. Personally responsible for the taxpayer-backed student loans received on behalf of the provider's students to cover their tuition fee payments. This includes ensuring that the provider is meeting the service agreement with the SLC and that only eligible courses are uploaded onto the SLC's course database.
 - c. Responsible for ensuring that the governing body understands its regulatory responsibilities and acts on them. This includes the accountable officer:
 - i. Receiving communications from the OfS on behalf of the governing body and alerting the governing body to these.
 - ii. Representing the governing body in all matters relating to accountability and regulation by the OfS.
 - iii. Delegating authority appropriately within the provider to provide information to the OfS. This includes providing the OfS with data returns, notifying the OfS of reportable events and providing any other information that the OfS, or a person nominated by the OfS, specifies, at the time and in the manner and form specified.
 - d. Required to appear before the Public Accounts Committee, if it requests their attendance, alongside the OfS's chief executive in matters relating to the registration and funding of the provider.



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